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CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2198

Introduced by Assembly Member Houston

February 22, 2006

An act to amend Sections 725, 2241, 2242, and 2242.1 of, and to repeal and add Section 2241.5 of, the Business and Professions Code, and to amend Section 11156 of the Health and Safety Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2198, as amended, Houston. Health care: controlled substances and dangerous drugs.

Existing law makes it unprofessional conduct for specified health care providers to engage in repeated acts of clearly excessive prescribing or administering of drugs or treatment, subject to specified penalties. Existing law prohibits disciplinary action under these provisions against a physician and surgeon who is acting lawfully in compliance with the California Intractable Pain Treatment Act.

This bill would, in addition, *make it unprofessional conduct to engage in repeated acts of clearly excessive furnishing or dispensing of drugs or treatment and would prohibit disciplinary action or*

persecution under these provisions against a ~~physician and surgeon practitioner~~ who has a medical basis for prescribing, furnishing, dispensing, or administering a dangerous drug or prescription controlled substance. ~~The bill would require that the investigation of a physician and surgeon for repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering drugs include a review by specified experts.~~

Existing law, the Medical Practice Act, provides for the licensing and regulation of physicians and surgeons by the Medical Board of California, and the violation of specified provisions of the act is a crime. The California Intractable Pain Treatment Act, in the Medical Practice Act, authorizes a physician and surgeon to prescribe or administer controlled substances to a person in the course of treatment for a diagnosed condition causing intractable pain, except in certain circumstances, and prohibits disciplinary action against a physician and surgeon for such action.

This bill would delete these provisions and would instead authorize a physician and surgeon to prescribe for, or dispense or administer to, a person under his or her treatment for a medical condition, drugs or prescription controlled substances for the treatment of pain or a condition causing pain, including intractable pain. The bill would require the physician and surgeon to exercise reasonable care in determining whether a particular patient or condition, or complexity of the patient's treatment, including, but not limited to, a current or recent pattern of drug abuse, requires consultation with, or referral to, a more qualified specialist. A violation of this requirement would be a crime. Although the bill would exempt a physician and surgeon acting in accordance with these provisions from disciplinary action for the prescribing, dispensing, or administering of dangerous drugs or prescription controlled substances, it would expressly provide that the power of the board to take certain disciplinary actions not be affected with regard to specified misconduct and that the governing body of a hospital not be prohibited from taking certain disciplinary actions against a physician and surgeon.

Existing law, except as specified, prohibits a person from prescribing, administering, or dispensing a controlled substance to an addict or habitual user or a person representing himself or herself as an addict or habitual user. Existing law generally makes it unprofessional conduct for a physician and surgeon to prescribe, sell,

furnish, give away, or administer certain drugs to an addict or habitué, or to offer to do so, except as specified.

This bill would delete the provision making it unprofessional conduct for a physician and surgeon to prescribe, sell, furnish, give away, or administer certain drugs to an addict or habitué, or to offer to do so. The bill would authorize a physician and surgeon to prescribe, dispense, or administer prescription drugs, including prescription controlled substances, (1) to an addict under his or her treatment for a purpose other than maintenance on, or detoxification from, prescription drugs or controlled substances and (2) under specified conditions to an addict for purposes of maintenance on, or detoxification from, prescription drugs or controlled substances. The bill would also authorize prescription drugs or controlled substances to be administered or applied by a physician and surgeon, or by a registered nurse acting under his or her instruction and supervision, in certain circumstances. A violation of these requirements would be a crime. The bill would also revise the prohibition against prescribing, administering, or dispensing a controlled substance to an addict or habitual user to delete the reference to a habitual user, and to exempt activity pursuant to the above authorization. The bill would define addict for purposes of these provisions.

Existing law makes it unprofessional conduct for a physician and surgeon to prescribe, dispense, or furnish dangerous drugs without a good faith prior examination and medical indication. Existing law also, with specified exceptions, prohibits a person or entity from prescribing, dispensing, or furnishing, or causing to be prescribed, dispensed, or furnished, dangerous drugs or dangerous devices on the Internet for delivery to a person in California without a good faith prior examination and medical indication.

This bill would, for purposes of these provisions, require an appropriate prior examination instead of a good faith prior examination. The bill would make related legislative findings.

Because this bill would create new crimes, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature hereby finds and declares the
2 following:

3 (a) The investigation and prosecution of pain management
4 cases in California have evolved over the past 15 years.

5 (b) The Pain Patient's Bill of Rights and the Intractable Pain
6 Treatment Act were created to ensure patients received adequate
7 pain medication and to protect a physician and surgeon from
8 being disciplined solely because of the amounts of controlled
9 substances he or she prescribed or administered.

10 (c) California recognizes that prescription medication,
11 including controlled substances, can play a critical role in the
12 treatment of pain, and, in and of itself, is an insufficient basis to
13 determine if a physician and surgeon has violated the standard of
14 care in his or her treatment of pain management patients.

15 (d) Undertreatment of pain, including the use of opioids, is a
16 continuing problem in the State of California, and some terms of
17 the Intractable Pain Treatment Act are outdated and confusing.

18 (e) In recognition of the Medical Board of California's
19 consumer protection mandates, and in an attempt to provide
20 better treatment of pain patients, as well as protect the public
21 through the appropriate investigation and prosecution of those
22 who violate the standard of care when treating pain patients, the
23 Legislature recognizes that it is time to reflect upon the current
24 state of pain management to aid both those who treat pain
25 patients, as well as those who investigate and prosecute
26 physicians and surgeons.

27 SEC. 2. Section 725 of the Business and Professions Code is
28 amended to read:

29 725. (a) Repeated acts of clearly excessive prescribing,
30 furnishing, dispensing, or administering of drugs or treatment,
31 repeated acts of clearly excessive use of diagnostic procedures,
32 or repeated acts of clearly excessive use of diagnostic or
33 treatment facilities as determined by the standard of the
34 community of licensees is unprofessional conduct for a physician

1 and surgeon, dentist, podiatrist, psychologist, physical therapist,
2 chiropractor, or optometrist.

3 (b) Any person who engages in repeated acts of clearly
4 excessive prescribing or administering of drugs or treatment is
5 guilty of a misdemeanor and shall be punished by a fine of not
6 less than one hundred dollars (\$100) nor more than six hundred
7 dollars (\$600), or by imprisonment for a term of not less than 60
8 days nor more than 180 days, or by both that fine and
9 imprisonment.

10 (c) A practitioner who has a medical basis for prescribing,
11 furnishing, dispensing, or administering dangerous drugs or
12 prescription controlled substances shall not be subject to
13 disciplinary action or prosecution under this section.

14 ~~(d) An investigation of a physician and surgeon for repeated~~
15 ~~acts of clearly excessive prescribing, furnishing, dispensing, or~~
16 ~~administering drugs shall include a review by an expert in pain~~
17 ~~management and addiction medicine and a review by an expert in~~
18 ~~the same specialty as the physician and surgeon to confirm a~~
19 ~~violation of this section.~~

20 ~~(e)–~~

21 (d) No physician and surgeon shall be subject to disciplinary
22 action pursuant to this section for treating intractable pain in
23 compliance with Section 2241.5.

24 SEC. 3. Section 2241 of the Business and Professions Code is
25 amended to read:

26 2241. (a) A physician and surgeon may prescribe, dispense,
27 or administer prescription drugs, including prescription
28 controlled substances, to an addict under his or her treatment for
29 a purpose other than maintenance on, or detoxification from,
30 prescription drugs or controlled substances.

31 (b) A physician and surgeon may prescribe, dispense, or
32 administer prescription drugs or prescription controlled
33 substances to an addict for purposes of maintenance on, or
34 detoxification from, prescription drugs or controlled substances
35 only as set forth in subdivision (c) or in Sections 11215, 11217,
36 11217.5, 11218, 11219, and 11220 of the Health and Safety
37 Code. Nothing in this subdivision shall authorize a physician and
38 surgeon to prescribe, dispense, or administer dangerous drugs or
39 controlled substances to a person he or she knows or reasonably

1 believes is using or will use the drugs or substances for a
2 nonmedical purpose.

3 (c) Notwithstanding subdivision (a), prescription drugs or
4 controlled substances may also be administered or applied by a
5 physician and surgeon, or by a registered nurse acting under his
6 or her instruction and supervision, under the following
7 circumstances:

8 (1) Emergency treatment of a patient whose addiction is
9 complicated by the presence of incurable disease, acute accident,
10 illness, or injury, or the infirmities attendant upon age.

11 (2) Treatment of addicts in state-licensed institutions where
12 the patient is kept under restraint and control, or in city or county
13 jails or state prisons.

14 (3) Treatment of addicts as provided for by Section 11217.5 of
15 the Health and Safety Code.

16 (d) (1) For purposes of this section and Section 2241.5,
17 “addict” means a person whose actions are characterized by
18 craving in combination with one or more of the following:

19 (A) Impaired control over drug use.

20 (B) Compulsive use.

21 (C) Continued use despite harm.

22 (2) Notwithstanding paragraph (1), a person whose
23 drug-seeking behavior is primarily due to the inadequate control
24 of pain is not an addict within the meaning of this section or
25 Section 2241.5.

26 SEC. 4. Section 2241.5 of the Business and Professions Code
27 is repealed.

28 SEC. 5. Section 2241.5 is added to the Business and
29 Professions Code, to read:

30 2241.5. (a) A physician and surgeon may prescribe for, or
31 dispense or administer to, a person under his or her treatment for
32 a medical condition dangerous drugs or prescription controlled
33 substances for the treatment of pain or a condition causing pain,
34 including, but not limited to, intractable pain.

35 (b) No physician and surgeon shall be subject to disciplinary
36 action for prescribing, dispensing, or administering dangerous
37 drugs or prescription controlled substances in accordance with
38 this section.

1 (c) This section shall not affect the power of the board to take
2 any action described in Section 2227 against a physician and
3 surgeon who does any of the following:

4 (1) Violates subdivision (b), (c), or (d) of Section 2234
5 regarding gross negligence, repeated negligent acts, or
6 incompetence.

7 (2) Violates Section 2241 regarding treatment of an addict.

8 (3) Violates Section 2242 regarding performing an appropriate
9 prior examination and the existence of a medical indication for
10 prescribing, dispensing, or furnishing dangerous drugs.

11 (4) Violates Section 2242.1 regarding prescribing on the
12 Internet.

13 (5) Fails to keep complete and accurate records of purchases
14 and disposals of substances listed in the California Uniform
15 Controlled Substances Act (Division 10 (commencing with
16 Section 11000) of the Health and Safety Code) or controlled
17 substances scheduled in the federal Comprehensive Drug Abuse
18 Prevention and Control Act of 1970 (21 U.S.C. Sec. 801 et seq.),
19 or pursuant to the federal Comprehensive Drug Abuse Prevention
20 and Control Act of 1970. A physician and surgeon shall keep
21 records of his or her purchases and disposals of these controlled
22 substances or dangerous drugs, including the date of purchase,
23 the date and records of the sale or disposal of the drugs by the
24 physician and surgeon, the name and address of the person
25 receiving the drugs, and the reason for the disposal or the
26 dispensing of the drugs to the person, and shall otherwise comply
27 with all state recordkeeping requirements for controlled
28 substances.

29 (6) Writes false or fictitious prescriptions for controlled
30 substances listed in the California Uniform Controlled
31 Substances Act or scheduled in the federal Comprehensive Drug
32 Abuse Prevention and Control Act of 1970.

33 (7) Prescribes, administers, or dispenses in violation of this
34 chapter, or in violation of Chapter 4 (commencing with Section
35 11150) or Chapter 5 (commencing with Section 11210) of
36 Division 10 of the Health and Safety Code.

37 (d) A physician and surgeon shall exercise reasonable care in
38 determining whether a particular patient or condition, or the
39 complexity of a patient's treatment, including, but not limited to,

1 a current or recent pattern of drug abuse, requires consultation
2 with, or referral to, a more qualified specialist.

3 (e) Nothing in this section shall prohibit the governing body of
4 a hospital from taking disciplinary actions against a physician
5 and surgeon pursuant to Sections 809.05, 809.4, and 809.5.

6 SEC. 6. Section 2242 of the Business and Professions Code is
7 amended to read:

8 2242. (a) Prescribing, dispensing, or furnishing dangerous
9 drugs as defined in Section 4022 without an appropriate prior
10 examination and a medical indication, constitutes unprofessional
11 conduct.

12 (b) No licensee shall be found to have committed
13 unprofessional conduct within the meaning of this section if, at
14 the time the drugs were prescribed, dispensed, or furnished, any
15 of the following applies:

16 (1) The licensee was a designated physician and surgeon or
17 podiatrist serving in the absence of the patient's physician and
18 surgeon or podiatrist, as the case may be, and if the drugs were
19 prescribed, dispensed, or furnished only as necessary to maintain
20 the patient until the return of his or her practitioner, but in any
21 case no longer than 72 hours.

22 (2) The licensee transmitted the order for the drugs to a
23 registered nurse or to a licensed vocational nurse in an inpatient
24 facility, and if both of the following conditions exist:

25 (A) The practitioner had consulted with the registered nurse or
26 licensed vocational nurse who had reviewed the patient's records.

27 (B) The practitioner was designated as the practitioner to serve
28 in the absence of the patient's physician and surgeon or
29 podiatrist, as the case may be.

30 (3) The licensee was a designated practitioner serving in the
31 absence of the patient's physician and surgeon or podiatrist, as
32 the case may be, and was in possession of or had utilized the
33 patient's records and ordered the renewal of a medically
34 indicated prescription for an amount not exceeding the original
35 prescription in strength or amount or for more than one refill.

36 (4) The licensee was acting in accordance with Section
37 120582 of the Health and Safety Code.

38 SEC. 7. Section 2242.1 of the Business and Professions Code
39 is amended to read:

1 2242.1. (a) No person or entity may prescribe, dispense, or
2 furnish, or cause to be prescribed, dispensed, or furnished,
3 dangerous drugs or dangerous devices, as defined in Section
4 4022, on the Internet for delivery to any person in this state,
5 without an appropriate prior examination and medical indication,
6 except as authorized by Section 2242.

7 (b) Notwithstanding any other provision of law, a violation of
8 this section may subject the person or entity that has committed
9 the violation to either a fine of up to twenty-five thousand dollars
10 (\$25,000) per occurrence pursuant to a citation issued by the
11 board or a civil penalty of twenty-five thousand dollars (\$25,000)
12 per occurrence.

13 (c) The Attorney General may bring an action to enforce this
14 section and to collect the fines or civil penalties authorized by
15 subdivision (b).

16 (d) For notifications made on and after January 1, 2002, the
17 Franchise Tax Board, upon notification by the Attorney General
18 or the board of a final judgment in an action brought under this
19 section, shall subtract the amount of the fine or awarded civil
20 penalties from any tax refunds or lottery winnings due to the
21 person who is a defendant in the action using the offset authority
22 under Section 12419.5 of the Government Code, as delegated by
23 the Controller, and the processes as established by the Franchise
24 Tax Board for this purpose. That amount shall be forwarded to
25 the board for deposit in the Contingent Fund of the Medical
26 Board of California.

27 (e) If the person or entity that is the subject of an action
28 brought pursuant to this section is not a resident of this state, a
29 violation of this section shall, if applicable, be reported to the
30 person's or entity's appropriate professional licensing authority.

31 (f) Nothing in this section shall prohibit the board from
32 commencing a disciplinary action against a physician and
33 surgeon pursuant to Section 2242.

34 SEC. 8. Section 11156 of the Health and Safety Code is
35 amended to read:

36 11156. (a) Except as provided in Section 2241 of the
37 Business and Professions Code, no person shall prescribe for, or
38 administer, or dispense a controlled substance to, an addict, or to
39 any person representing himself or herself as such, except as
40 permitted by this division.

1 (b) (1) For purposes of this section, “addict” means a person
2 whose actions are characterized by craving in combination with
3 one or more of the following:

4 (A) Impaired control over drug use.

5 (B) Compulsive use.

6 (C) Continued use despite harm.

7 (2) Notwithstanding paragraph (1), a person whose
8 drug-seeking behavior is primarily due to the inadequate control
9 of pain is not an addict within the meaning of this section.

10 SEC. 9. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 the only costs that may be incurred by a local agency or school
13 district will be incurred because this act creates a new crime or
14 infraction, eliminates a crime or infraction, or changes the
15 penalty for a crime or infraction, within the meaning of Section
16 17556 of the Government Code, or changes the definition of a
17 crime within the meaning of Section 6 of Article XIII B of the
18 California Constitution.